



POLICE / PROSECUTOR UPDATE

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Several opinions of the Indiana Court of Appeals have discussed what actions a police officer may take during a routine traffic stop. See PPU issues number 97 (routine patdown search for officer safety), 98 (routinely asking driver if he has a weapon on his person or in his vehicle), 99 (routinely ask driver for consent to search vehicle), and 102 (detain vehicle for a sniff test by a trained narcotics detection dog). Last month the Indiana Supreme Court finally addressed one aspect of this issue.

The facts indicate that a State Police trooper observed the defendant's vehicle exceeding the speed limit. When the defendant stopped for a red traffic light, the trooper pulled behind him. The defendant's vehicle then made a right turn without displaying a turn signal, and the trooper stopped him. When the trooper approached the vehicle, he observed that the defendant had red, glassy eyes and detected a strong odor of alcohol on his breath. There were also alcoholic beverage containers in the vehicle. The trooper asked the defendant to step from the vehicle and accompany him to his patrol car to further investigate whether the defendant was intoxicated. As it was the trooper's personal practice to pat down any person he intends to place in his car, he patted down the defendant. He found that the defendant was carrying a handgun for which he had no license. Prior to and at the time of the patdown, the defendant had not exhibited any violent, resistant, or furtive movements, and the trooper did not have any suspicion that the defendant was armed.

The court first reiterated the well-known rule in these cases: The law permits a reasonable search for weapons for the protection of the police officer *where the officer* has reason to believe that he is dealing with an armed and dangerous individual, regardless whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely sure that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.

The Fourth Amendment allows privacy interests of citizens to be balanced against the interests of officer safety, and the court recognized that law enforcement

personnel face significant risks when making traffic stops. However, it remains the law that police may not frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked.

The court then got to what will now be the law in Indiana. When an officer places a person in a patrol car that will be occupied by the officer or other persons, there is a significantly heightened risk of substantial danger to those in the car in the event the detainee is armed. Therefore, it is *generally* reasonable for a prudent officer to pat down persons to be placed in his patrol car. The key question then becomes the reasonableness during a routine traffic stop of placing a motorist in the police car, thereby subjecting him to a preliminary patdown search.

The court stated that it could envision various circumstances that would make it reasonably necessary for police to require a stopped motorist to enter a police vehicle, such as inclement weather, lack of available lighting for paperwork, the need to access equipment with the detained motorist, etc. However, the law does *not* permit the police *routinely* to place traffic stop detainees in a police vehicle if this necessarily subjects the detainee to a preliminary patdown frisk. An officer is simply not using the least intrusive means to investigate a traffic stop if, without a particularized justification making it reasonably necessary, he places the person in his patrol vehicle and thereby subjects the person to a frisk.

In this case there was no reason for the trooper to place the defendant in his patrol car. There was a range of field sobriety tests that could have been performed outside the patrol car, and even the horizontal gaze test the officer planned to administer did not require being in the vehicle. The trooper also had the option of allowing the defendant to stay in his car and take a portable breath test. Therefore, because the frisk was not supported by a particularized reasonable suspicion that the defendant was armed, and because there was no reasonably necessary basis for placing the defendant in the patrol car, the search of the defendant was unlawful.

Wilson v. State, ____ N.E.2d ____ (Ind. 04/16/01).

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